

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2467 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

SHAFIBHAI MOHMADBHAI SHAIKH

Versus

CHRIST CHURCH

Appearance:

MR PB MAJMUDAR for Petitioners

MR MB GANDHI for Respondents

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 26/09/97

ORAL JUDGEMENT

1. Admit. Mr. M.B. Gandhi appears and waives service of admission for and on behalf of the respondents. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. This First Appeal is filed by third parties who

were not parties to the settlement recorded by the learned City Civil Judge. In the application moved for Leave of this Court to file Appeal, this Court has granted "Leave" today and thereafter this First Appeal is taken up for final hearing.

3. It appears that there is a big parcel of land belonging to the respondents No.1 and 2, namely, Christ Church, Mirzapur and City Cemetery Committee through its Chairman, Secretary and Treasurer, all are at present residing at Ahmedabad IP Mission compound. The respondents No.3 and 4 are the original defendants. The plaintiffs filed the suit being Regular Civil Suit No. 2894 of 1981 in the City Civil Court, Ahmedabad, and in such suit, which was filed against Mohmadkhan Jammakhan and Fatehkhan Aslamkhan Pathan, being original defendants No. 3 and 4, a compromise was reached which was produced before the learned City Civil Judge and in terms of the compromise, consent decree was ordered to be drawn and the defendants who have raised various defences in the written statement have specifically given up in the said consent terms. The consent terms are duly signed by the parties and they are dated 26th June, 1996 wherein ultimately on 12th July, 1996, the Court has passed the order directing the consent decree to be drawn as per the terms and conditions of the compromise deed or consent deed produced before the court. The learned City Civil Judge who has recorded consent terms, has been careful enough to notice the presence of the parties, the respective advocates and the fact that the parties have admitted the consent terms and, therefore, the consent terms were recorded and decree was ordered to be drawn accordingly.

3. The respondents who are now before the Court pursuant to the leave granted by this court are the hutment dwellers being ten in number who are occupying their huts in the crematorium itself belonging to the plaintiffs. The grievance of the third parties is that they have been in possession of such huts albeit without any title and they cannot be removed from such huts nor can their huts be removed and possession be recovered without following due process of law. Mr. M.B. Gandhi appearing for the Trust or the original plaintiffs has pointed out to the court that the entire parcel of land being part of Survey No.1 belongs to the plaintiffs and that the ten huts which are situated within the crematorium are owned by various persons who are the third parties before the court. The measurement of the said huts is mentioned specifically in the map which is produced before this court and Mr. Gandhi has submitted

before this Court that the third parties who are present before the court shall be provided place equivalent to the measurement shown in the map against the name of each individual and he will be at liberty to put up his hut and/or kuchha construction and/or construction of brick in the area where other hutment dwellers beyond the crematorium are permitted to reside. That place also belongs to the Trust and the third parties being ten in number are ready and willing to move to the place which is assigned to them of the equivalent size along with the other hutment dwellers or in front of the hutment dwellers and it is clarified that no one else whatsoever will have any right whatsoever to recover any amount from this ten hutment dwellers either as rent or licence fee or any fee whatsoever and any person who is found to be demanding such rent from these ten hutment dwellers shall be liable to contempt of this court and the court shall take action against such persons for illegally and unauthorisedly demanding rent and/or licence fee and/or any other amount from these third parties who are before the court.

4. The trust will be entitled to charge nominal rent for the parcel of land below the hut which the hutment dwellers are going to build at their own costs and risks and it is impressed upon the trust that the trust will charge the most nominal rent. Anyone else raising any demand from these ten hutment dwellers as aforesaid shall be guilty of committing contempt of this court and these ten hutment dwellers, any one of them, is entitled to move this very Court (S.D.Shah, J.) for contempt against such person and for appropriate action against such person.

5. The small map which is got prepared by M.B. Gandhi showing the exact measurement in possession of the ten hutment dwellers is taken on record and is ordered to be annexed with this judgment and equivalent land shall be provided to them for the purpose of putting up their huts. The huts will be put by the hutment dwellers at their own costs and risk. The hutment dwellers shall be provided the place mentioned in the map within 15 days hereafter and within 45 days thereafter the said ten hutment dwellers, namely, the third parties, shall vacate the crematorium and shall remove their huts and all belongings from the crematorium belonging to the trust and they shall shift to the new huts which they will build.

6. In the result, the appeal is allowed to the aforesaid extent only. There shall be no order as to

costs.

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